

ARTICLE 9

GRIEVANCE PROCEDURE

Section A. General.

A grievance is defined as a written complaint alleging there has been a violation, misinterpretation or misapplication of any provision of this Agreement; alleging a violation of any condition of employment established or continued in this Agreement, or in any Employer rule, policy, law, procedure, or regulation, if such condition of employment is a mandatory subject of bargaining under the Civil Service Rules and Regulations; or a claim of discipline without just cause. Nothing shall prohibit the grievant from contending that the alleged violation arises out of an existing mutually accepted past practice pertaining to a condition of employment which is or would have been a mandatory subject of bargaining. A claim concerning an appointment to a position outside this Unit is not a grievance under this Agreement.

The parties recognize and affirm that the premise upon which the Security Unit contractual grievance procedure is predicated is the mutual good faith and commitment by both the Union and the Employer to determine, process, discuss, answer and, as appropriate, adjust and resolve all grievances promptly and within the parties' scope of authority. Implicit in this affirmation is the mutual duty of representatives of the Union and the Employer to make a sincere and determined effort to settle meritorious grievances, and to keep the grievance procedure free from non-meritorious grievances.

It is understood that officials designated respectively by the Union and the Employer to represent them at the various steps of the grievance procedure shall have the full authority to adjust grievances in accordance with the terms of the approved collective bargaining contract, and will be held accountable for exercising such authority in good faith. It is also understood that contractual grievance settlements and decisions entered at advanced steps in the grievance procedure will be implemented by the agency and Union officials involved in a prompt and thorough manner, and within the scope of authority delegated to them.

The grievance procedure provided herein, including the supplemental process appended to this Article, is the exclusive procedure of the

parties and supersedes any previous procedure. The premises upon which this procedure is predicated are good faith and the mutual responsibility of both the Union and the Employer to determine, process, discuss, answer and, where appropriate, adjust all grievances in a timely fashion and within the scope of the parties' authority. This grievance procedure set out above shall not be used for the adjustment of any dispute for which the Civil Service Rules or Regulations require the exclusive use of a Civil Service forum or procedure. Disputes concerning prohibited subjects of bargaining shall not be subject to this procedure, as this contract does not make any guarantees with respect to such matters.

Grievance decisions or settlements reached at any step prior to an arbitration award shall not be precedent setting or prejudicial with respect to any other case, past, present or future and shall be inadmissible in any arbitration hearing, unless expressly provided by its own terms. No party shall interfere with the right to prompt, orderly, and timely grievance administration through abuse of this procedure.

Only related subject matter shall be addressed in any one grievance. The grievance shall contain the clearest possible statement of the grievance by indicating the issue involved, the relief sought, the date the incident or alleged violation took place, and the specific section or sections of this Agreement involved. The grievance shall be presented to the appropriate management representative on a form mutually agreed upon and supplied by MCO and the Employer, and shall be signed and dated by the grievant(s) and/or the Steward.

It is expressly understood and agreed that the specific provisions of this Agreement take precedence over policies, rules, regulations, conditions and practices contrary thereto. No expansion or modification of this Agreement shall be made except by written mutual agreement between the Employer and the Union.

The parties agree that the universal principle of labor relations which provides that employees shall work while grieving is to be applied in interpreting this Contract.

Neither the Employer nor the Union will release names of grievants or details of grievances in a manner which the party knows, or should expect, would embarrass a grievant or a supervisor.

According to the terms of this Agreement, MCO retains jurisdiction over all grievances including, but not limited to, adjusting, appealing or withdrawing.

However, the Employer expressly reserves the right to require an individual employee to sign a release in conjunction with a grievance settlement if the grievance alleges employment discrimination or other tortuous conduct on behalf of the Employer.

Where an employee withdraws from a grievance as part of a settlement in a lawsuit pertaining to the same facts giving rise to the grievance, such withdrawal by the employee from the grievance shall not impair the right of the Union to pursue the grievance principles to protect the collective interests of the Bargaining Unit members as a whole.

When an individual grievant(s) or MCO is satisfied with the resolution of a grievance offered by the Employer, processing the grievance will end. However, when acting in the collective interests of Bargaining Unit members, the Union may initiate and continue to grieve violation(s) concerning the application or interpretation of this Agreement. Such grievance(s) shall identify, to the extent possible, individual employees and/or classes with examples of employees affected. MCO itself may grieve alleged violations of rights conferred solely upon the Union by this Agreement; such grievance(s) shall be filed at the appropriate step by a Chief Steward or Union officer designated by the Union to act in such capacity.

Group grievances are defined as, and limited to, those grievances which cover more than one employee and which pertain to like circumstances and facts for the grievants involved. Group grievances, to the extent possible, shall name employees and/or classifications with examples of employees covered and may, at the option of the Union, be submitted at Step 2. Group grievances shall be so designated at the first appropriate step of the grievance procedure.

Section B. Initiation and Processing of Grievances.

Any employee believing he/she has cause for grievance may orally raise the grievance with his/her immediate supervisor when there is a reasonable belief that the ability to resolve the complaint is within the scope of the supervisor's authority. The supervisor shall make a good faith effort to resolve such complaint within the scope of his/her

authority. It is the intent of the parties to attempt to resolve problems before they become written grievances.

All grievances shall be presented promptly, and filed in writing no later than 21 calendar days from the date the employee first became aware or, by the exercise of reasonable diligence, should have become aware of the cause of such grievance. The date on which a counseling, reprimand, less than satisfactory rating or notice of suspension or discharge is given or mailed to the employee shall be considered the first day of the 21-day time frame.

In the case of on-going administrative payroll errors, grievances shall be presented within 21 days from when the error was reflected in the employee's pay, or from when the employee becomes aware of the error, whichever is later. Calendar days, for the purpose of this Article, are defined as consecutive periods of 24 hours beginning at midnight on the first day and ending at midnight on the last day.

Employees shall present grievances, either through the designated Union Representative or directly themselves, at the appropriate initial step of the grievance procedure. If the employee files the grievance directly, he/she must obtain the appropriate form from the union (or personnel office), which will be recorded pursuant to current practice. The employee shall be responsible to supply the union with a copy of the original statement of grievance, if not previously provided, as well as any answer that may have been received. There shall be no further discussion on the written grievance until the appropriate Union Representative has been afforded a reasonable opportunity to be present at any grievance meeting(s) with the employee(s). Any settlement reached shall be communicated to the Union and shall not be inconsistent with the provisions of this Agreement.

Grievances which by nature are not capable of being settled at a preliminary step of the grievance procedure may by mutual agreement be filed at the agreed upon advanced step where the action giving rise to the grievance was initiated or where the requested relief could be granted. The Union shall not be required to file a grievance at a step below the level at which the action giving rise to the grievance took place.

The parties recognize the authority of the Employer to suspend, demote, discharge, or take other appropriate disciplinary action

against employees only for just cause. A non-probationary employee who alleges that such action was not based on just cause may initiate a grievance regarding a demotion, suspension, payment of a fine in lieu of suspension, forfeiture of leave credits, or discharge taken by the Employer:

1. In the Department of Corrections, grievances regarding disciplinary action for a penalty determined by the director or his/her designee shall be filed directly to Step 2. All other disciplinary action grievances shall be initiated in writing and filed to the Step 1 designee. The department agrees to notify the employee and Union if the director or his/her designee determined the disciplinary action.
2. In the Department of Community Health, grievances regarding disciplinary suspension, demotion or discharge shall be filed directly to Step 2.

There shall be no appeal beyond Step 2 on initial probationary service ratings or separation of initial probationary employees which occur during or upon expiration of the probationary period.

Counseling memoranda, reprimands and annual performance ratings are not appealable beyond Step 2, but the Union may seek a redetermination in a counseling memorandum or written reprimand grievance as provided below:

Redetermination on Counseling Memoranda and Written Reprimands: The Union may seek a redetermination of a Step 2 denial of a grievance over formal counseling or written reprimand by submitting the reasons and facts for such appeal to the involved employee's Department Human Resources Director or Designee(s) within 45 calendar days of receipt of the Step 2 grievance answer. Such appeal will be submitted in writing by the MCO President or MCO Executive Director and will contain a request to re-evaluate the denial, the specific rationale behind the request, any new facts not available at previous steps, and the relief sought.

Upon receipt of such appeal, the Human Resources Director or Designee will evaluate the facts and fairness of such formal counseling or written reprimand based upon the information received in the appeal, any necessary further investigation, and submit findings to the initiating party within 21 calendar days

(unless mutually extended) of receipt of appeal or conference, if applicable.

No conference or meeting will be held on any formal counseling or written reprimand appeal unless the parties mutually agree that the facts of such case are too complex to be appealed only in writing and would better be served by a meeting on the matter.

It is the intent of the parties that the Union will only appeal those cases where it is apparent the facts of the case were not fully communicated at Step 2.

Nothing herein shall be construed to permit the appeal of any grievance regarding a counseling memorandum or written reprimand beyond such redetermination procedure.

Unsatisfactory service rating grievances of employees who have successfully completed the initial probationary period may be appealed by MCO to Arbitration.

Immediately prior to a mutually scheduled meeting with management at each step of the grievance procedure, the grievant and the designated MCO Representative will be permitted a reasonable amount of time, normally not to exceed one-half hour, without loss of pay for consultation and preparation for such grievance meeting during their regularly scheduled hours of employment. Overtime is not authorized.

One designated Steward or Chief Steward will be permitted to process a grievance without loss of pay. In a group grievance two grievants and one designated MCO Steward or Chief Steward shall be entitled to appear without loss of pay.

If a grievant, designated Union Representative, or necessary witness is required to attend a grievance conference or arbitration hearing scheduled away from his/her work location and at a time outside their regular shift, such employee shall be permitted to attend such meeting or hearing without loss of pay. Second and third shift employees shall be allowed reasonable travel to and from the work place and shall receive equivalent time off the following shift only, if such employee's next shift is scheduled to commence within 16 hours from the termination of the hearing or meeting. Travel expenses and overtime are not authorized.

The Employer is not responsible for compensating any employees for time spent processing grievances outside their regularly scheduled hours of employment. The Employer is not responsible for any travel or subsistence expenses incurred by grievants or representatives in processing grievances.

Section C. Grievance Procedure.

Any employee having a complaint is encouraged to discuss the complaint with his/her immediate supervisor who will make a good faith effort to resolve the complaint within the scope of his/her authority.

Step 1: If satisfactory resolution is not reached with the employee's supervisor, the grievance must be filed in writing to the Step 1 official designated by the Department. Such appeal shall be considered timely if filed within the 21-calendar day time limit for initiation of a grievance. The parties, upon request of either the Union or the designated official, will meet to discuss and resolve the grievance if possible. The grievant shall be entitled to attend if such attendance is requested by the Union or management official. A written answer will be returned to the grievant and designated MCO Representative within 21 calendar days from receipt of the written appeal to Step 1. The Union will provide written confirmation to the Department of the appeal or withdrawal of each grievance between Step 1 and arbitration.

Grievance meetings as provided for in this Step involving 2nd or 3rd shift employees shall be held as conveniently as possible to the grievant's shift and normally immediately precede or follow the grievant's shift by one hour.

Step 2: If satisfactory settlement is not reached at Step1, to be considered further, within 45 calendar days from receipt of the Step 1 written answer (or the date the answer was due if no answer was provided), the grievance shall be appealed to the Departmental Appointing Authority (or designee) by the MCO Central Office. In DOC where the grievance is regarding a disciplinary penalty determined by the director or his/her designee, and in DCH the grievant may be entitled to attend the Step 2 conference if such attendance is requested by the Union or management official. The Departmental Representative may meet with the designated MCO Representative(s) to attempt to resolve the grievance; however, such

meeting shall occur concerning suspension without pay, unsatisfactory rating (for non-probationary employees only), discharge or demotion. A Step 2 conference is discretionary, and is not mandatory, for a grievance concerning a probationary employee who has received an unsatisfactory service rating, but which does not involve the employee's discharge. The written answer of the Step 2 official will be provided to the grievant and the designated MCO Representative within 30 calendar days from the receipt of the written appeal to Step 2. The above time limits may be extended by mutual agreement of the parties.

Departmental Pre-Arbitration Appeal: If satisfactory settlement is not reached on the basis of the Employer's Step 2 written answer or if no answer is provided within the Step 2 time limits or agreed upon extension, to be considered further the MCO Executive Board or its agent shall appeal the grievance to pre-arbitration within 45 calendar days from receipt of the Step 2 written answer (or the date the answer was due if no answer was provided), with a copy to OSE. A designated representative of the Department where the grievance originated shall meet with the designated MCO official to discuss the grievance. As necessary and upon mutual agreement, an MCO Executive Board Member or Chapter President may be designated by the President to attend as an Alternate, provided that such Alternate is not the grievant. An effort shall be made at such meeting(s) to arrive at a fair and equitable settlement to avoid the necessity of an arbitration hearing. Such settlements, if reached, shall be confirmed in writing. The Union shall provide a copy of all pre-arbitration settlements to OSE within 15 calendar days of receipt by the Union. For the purpose of this Section, the Departmental Representative shall be other than the official who answered at Step 2, except by mutual agreement. In the event more than one Departmental Representative attends such meeting, one of the Departmental Representatives may be the Step 2 official.

Section D. Arbitration.

If satisfactory settlement is not reached at the final Departmental Step, only the MCO Executive Board or its agent may appeal the grievance to Arbitration within 90 calendar days from the date of transmittal of the pre-arb answer. The Union may raise the issue of the transmittal date upon receipt of the answer if there is a question regarding the mailing date. A copy of the arbitration demand shall be

served upon the departmental employer and the Office of the State Employer.

If an unresolved grievance is not timely appealed to Arbitration, it shall be considered closed without prejudice or precedent in the resolution of other grievances.

In the event a non-disciplinary contract interpretation or application grievance has been properly filed for Arbitration, at the request of MCO, the departmental employer or the Office of the State Employer, a conference between a representative of the Office of the State Employer, the Department, and the Union shall be held for the purpose of clarifying, stipulating and recording the issues to be arbitrated including any dispute related thereto, and to attempt to arrive at a fair and equitable settlement. All threshold issues shall be raised, if known, prior to the arbitration hearing.

The Arbitrator shall be selected and the hearing conducted under the rules of the American Arbitration Association (AAA). During the life of this Agreement, the parties may mutually agree to use the Federal Mediation and Conciliation Service for such purposes or a system where the Arbitrator is selected from a mutually agreed upon panel of Arbitrators.

In addition, the parties agree to mutually explore an alternative grievance resolution process involving the Department of Civil Service, which process would include the following elements: The scope of the procedure would be limited to only those cases which the parties have mutually agreed to submit to such procedure; only those cases involving disciplinary suspensions will be eligible for this procedure; the decision of the Civil Service Hearing Officer must be rendered within 14 calendar days; the decision shall include no explanation or rationale other than an indication of whether the grievance is granted or denied; the decision of the Civil Service Hearing Officer shall be final and binding on all parties.

The expenses and fees as billed by the Arbitrator shall be borne by the losing party. The Arbitrator shall have the authority to prorate the cost where a decision does not clearly state which party is the losing party. The filing fee shall be paid by the losing party. The expenses of a hearing reporter shall be borne by the party requesting the reporter unless the parties jointly agree to share such costs.

The parties may propose consolidation of grievance arbitration cases for arbitration hearings where such cases concern similar issues. The parties will continue to discuss expedited grievance arbitration or mediation procedure, as well as the types of cases which will be subject to such expedited procedure.

The Arbitrator shall only have the authority to determine compliance with the provisions of this Agreement. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. No monetary award may be made for attorney or witness fees arising out of, or attributable to, the grievance appeal. The Arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of the Civil Service Rules and Regulations and this Agreement and shall not make any award which in effect would grant MCO or the Employer any rights or privileges which were not obtained or preserved in the contract provisions. The authority of the Arbitrator shall remain subject to and subordinate to the limitations and restrictions on subject matter and personal jurisdiction in the Civil Service Rules and Regulations.

Except as provided in Civil Service Rules and Regulations, the decision of the Arbitrator will be final and binding on all parties to this Agreement and an Arbitration decision shall not be appealable to the Civil Service Commission. The written decision of the Arbitrator shall be rendered within 30 calendar days from the closing of the record of the hearing. However, when the Arbitrator declares a bench decision, such decision shall be rendered in writing within 15 calendar days from the date of the arbitration hearing. A written copy of the decision shall be provided, and, if available from either the arbitrator or AAA, in electronic format (disc) and sent to both the Union and Employer representatives and to OSE.

Section E. Time Limits.

Grievances not appealed within the designated time limits of the grievance procedure will automatically result in the grievance being considered closed. Grievances not answered by the Employer within the designated time limits at any step of the grievance procedure shall be considered automatically appealable to the next step. When the Employer does not provide the required answer to a grievance within the time limit provided at Steps 1 or 2, the time limits for filing

at the next step shall be extended for 14 additional calendar days, unless mutually extended further. The time limits at any step or for any conference may be extended by written mutual agreement of the parties involved at that particular step.

If the Employer Representative with whom a grievance appeal must be filed is located in a city other than that in which the grievance was processed in the preceding step, the mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period. Similarly, when an Employer answer must be forwarded to a city other than that in which the Employer Representative works, the mailing of the answer shall constitute a timely response if it is postmarked within the answer period.

Section F. Retroactivity.

Settlement of any grievance may or may not be retroactive as the equities of the particular case may demand as determined by the Arbitrator. In any case where it is determined that the award should be applied retroactively, except for administrative errors relating to the payment of wages, the maximum period of retroactivity allowed shall be a date not earlier than 180 calendar days prior to the initiation of the written grievance at the First Step. In cases of administrative error, the employee shall be entitled to be made whole for up to 26 pay periods from when the Employer was made aware of such error.

Employees who voluntarily terminate their employment will have their grievances immediately withdrawn unless such grievance directly affects their status upon termination or a claim of vested money interest in which cases the employee may benefit by any later settlement of a grievance in which they were involved. All claims of back wages based on involuntary separation shall be limited to the amount of base, holiday, and shift premium wages, excluding incidental overtime, the employee would otherwise have earned, less any unemployment compensation, workers' compensation, long-term disability benefits, social security benefits, welfare payments or compensation from any employment or other source received during the period for which the back pay is awarded; however, earnings from approved supplemental employment shall not be deducted.

Section G. Documents and Witnesses.

Upon written request, the MCO Central Office, or its designee, shall have access to and normally receive specific written, taped, recorded or electronic exhibits not previously provided or records available from the Employer not prohibited by law, and pertinent to the grievance under consideration. Discretion permitted under the Freedom of Information Act shall not be impaired by this Section. Documents requested under this Section shall be provided in a timely manner. Disputes regarding receipt of evidence under this section shall be addressed by MCO and the Department. This does not preclude the Union from grieving if the dispute is not resolved.

Upon request, prior to a scheduled Arbitration Hearing, all documents or other materials not previously provided or exchanged which either party intends to use as evidence will be forwarded to the other party. However, such response shall not limit either party in the presentation of necessary evidence.

Arbitration Hearings will be held at the location which best minimizes time lost from work. At least 14 calendar days before a scheduled Arbitration Hearing, the Union shall provide the Employer a written list of the witnesses it plans to call and who it requests to be relieved from duty. Nothing shall preclude the calling of previously unidentified witnesses. Upon request the Employer shall also provide a list of those it intends to call as witnesses.

Employees required to testify will be made available without loss of pay; however, whenever possible, they shall be placed on call to minimize time lost from work. Employees who have completed their testimony shall return promptly to work when their testimony is concluded unless they are required to assist the principal Union Representative(s) in the conduct of the case. The intent of the parties is to minimize time lost from work.

In the event the arbitration hearing is held on the witness's workday at other than the witness's scheduled work time, the properly designated union witness shall be permitted an equivalent amount of time off (including reasonable and necessary travel time if held away from the witness's work location) from scheduled work on his/her upcoming or previous shift or, by mutual agreement, on another day in the pay period. Employee requests to utilize available leave credits

for the remainder of the partial shift may be granted at the sole discretion of the Employer, but should not be unreasonably denied.

SUPPLEMENTAL GRIEVANCE PROCEDURE

During the negotiations leading to the 1999 Agreement, the parties agreed to the following provisions as a supplement to the general procedure in an effort to expedite the resolution of grievances. Elements of this procedure may be invoked as appropriate under the conditions listed below:

1. Where a backlog of grievances exists (10 or more) at a single Work Location (or between several locations with a shared administration), the parties shall timely arrange for a grievance resolution conference at the Work Location or mutually agreed upon location. The parties must find a mutually acceptable date within 30 calendar days of request by either party. Those in attendance must possess the ability to resolve any issues, however the Union's internal appeal procedure may continue. Nothing shall preclude the parties from mutually agreeing to meet where a significant backlog does not exist.
2. For grievances timely filed to arbitration, the parties agree to establish an expedited arbitration process. Only grievances in which the parties stipulate to the factual issues shall be part of this process. Neither party shall call any witnesses. Briefs, if filed, shall be mailed to the Arbitrator for exchange within 21 calendar days from conclusion of the arbitration, unless mutually agreed to otherwise. The Arbitrator's decision shall only contain his/her decision and rationale for the decision, and shall normally be issued within 14 calendar days. It is the intent of the parties that multiple grievances may be scheduled and heard on the same day.
3. Prior to the filing of the arbitration demand, the parties will schedule a mutually acceptable preferred hearing date and alternate hearing date, and notify AAA of the selected dates with the filing of the arbitration demand. It is the parties' intent that these dates will normally be between 60 and 90 calendar days from the filing of the arbitration demand. The parties shall mutually agree to a list of Arbitrators for use in this procedure.
4. To the extent possible, AAA shall provide the parties with a list of Arbitrators who are available on the selected date(s).

The above procedures are subject to modification by the parties as mutually agreeable and necessary to improve the process. Both parties will attempt to make the grievance procedure a timely process so that resolution of issues is not delayed. This supplemental procedure shall remain in effect for one year upon Civil Service approval, at which time the parties may modify or discontinue this process by mutual agreement.